

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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SCOTT RODGERS Plaintiff,  v.  CORRECTION OFFICER ORCHID, UNKNOWN CORRECTION OFFICER JOHN DOE, JOE WHITMORE, DR. HOWARD, JOHN SMITH, PLYMOUTH COUNTY Defendants.	) C.A. No. 04-11842-PBS ) ) ) ) ) ) ) ) )
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**PLAINTIFF SCOTT RODGERS' MOTION TO AMEND COMPLAINT**

Now comes the Plaintiff, Scott Rodgers, pursuant to Fed. R. Civ. P. 15, and hereby moves to amend the complaint to add Count V, a claim of medical malpractice against Defendant Howard, as well as to correct the case caption. As grounds therefore, the Plaintiff states the following:

1. At the deposition of Defendant Howard, which took place on September 8, 2006, it was determined that Defendant Howard is not a “public employee” within the meaning of M.G.L. ch. 258.
2. As such, Defendant Howard is liable for negligence in his own right.
3. The proposed amendment relates back to the original complaint filed in this case because “(1) relation back is permitted by the law that provides the statute of limitations applicable to the action,” and “(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.”
4. The amendment is in the interest of justice.

Respectfully submitted,  
The Plaintiff Scott Rodgers,  
By his attorneys,

DATED: September 16, 2006

//s// Michael Tumposky  
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### **LOCAL RULE 7.1 CERTIFICATION**

Undersigned counsel certifies that the parties have conferred and have attempted in good faith to resolve or narrow the issue.

//s// Michael Tumposky  
Michael Tumposky

### **CERTIFICATE OF SERVICE**

I, Michael Tumposky, hereby certify that, on this the 16th day of September, 2006, I served a copy of this document, where unable to do so electronically, on all counsel of record in this matter.

//s// Michael Tumposky  
Michael Tumposky